STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 15, 2001
v	No. 216050 Macomb Circuit Court
ROBERT PAUL GREENE, Defendant-Appellant.	LC No. 96-003132-FH

Before: Hoekstra, P.J., and Whitbeck and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of possession with intent to deliver at least 225 but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), and maintaining a building where controlled substances are kept, MCL 333.7405(1)(d); MSA 14.15(7405)(1)(d). The trial court sentenced defendant to consecutive terms of twenty to thirty years' imprisonment and one to two years' imprisonment, respectively. Because we find that the trial court clearly erred in failing to suppress the evidence encountered during an unlawful search and the evidence seized under a warrant issued on the basis of that search, we reverse.

I. Facts and Procedural History

In September 1995, Clinton Township police officers responded to a shooting at the Bob Greene Insurance Agency. Defendant met the officers at the door and let them into the building. Defendant had been shot three times, and was bleeding and upset. The officers had defendant sit down until medical personnel arrived. Defendant told the officers that a man had entered the insurance agency with a gun and demanded money. When defendant told him to leave, the man shot defendant and then fled. Police officers recovered three shell casings from the front-door area of the building. After the medical personnel took defendant to the hospital, two officers commenced a search of the building. Armed with evidence obtained from this initial warrantless search, the police obtained a search warrant and conducted a second exhaustive search.

The constitutionality of the warrantless search forms the basis of the instant appeal. Before trial, defendant moved to suppress the evidence seized pursuant to the search warrant, arguing that the warrant was predicated on suspected narcotics evidence found in the office that was illegally searched. At a pretrial evidentiary hearing, two officers assigned to investigate the

shooting testified that they conducted a search of defendant's business. The purpose of the search was to look for evidence pertaining to the assault on defendant and for valuables that needed to be secured. The officers were also seeking to determine whether defendant's account of the incident was truthful. The officers testified that they entered a small office toward the rear of the building and saw on a desk a money box that was open and had money inside. One officer testified that he noticed that the top right-hand drawer of the desk was partially open and he opened it the rest of the way. In that drawer, the officer saw some small brown glass vials that he recognized as common containers for drugs such as cocaine. A second officer testified that he found a large quantity of money in a partially open file-cabinet drawer in the same office, but made no mention whether he had to open the drawer further, or whether the cash was evident without opening the drawer more. Upon discovery of these items, the officers contacted a Lieutenant, who entered the office and determined that the officers should stop their search until a warrant was obtained. Nonetheless, the Lieutenant lifted a checkbook in the desk drawer and discovered suspected drugs.

On the basis of this evidence, the trial court denied defendant's pretrial motion to suppress, holding that the search of the desk drawer and file-cabinet drawer was justified under the exigent circumstances exception to the warrant requirement. The trial court noted that the officers were justified in opening the drawers more fully because a reasonable person could believe that the gunman may have taken something from them. Relying on the exigent circumstances and plain view exceptions to the warrant requirement, the trial court held that the cocaine and cash were admissible.

At trial, however, additional testimony was elicited concerning the nature and extent of the search of this small office. This testimony painted a notably different picture of the search conducted. The officer who testified at the evidentiary hearing that he saw vials when he further opened the desk drawer now testified that he saw a brown paper bag in the partially open desk drawer. He removed the bag and opened it, finding small brown glass vials. The second officer testified that the file cabinet was unlocked and that he opened a previously closed file-cabinet drawer. He looked inside and saw a large quantity of cash. He further stated that he saw a checkbook, which he moved aside, revealing several plastic baggies containing white powder that he suspected was cocaine. When the search resumed after a search warrant was obtained, several items connected with narcotics trafficking were found in the building, including over 500 grams of cocaine above the ceiling tiles in a back storage room.

Following the jury verdict and entry of judgment, defendant filed a motion for new trial. Among other things, defendant renewed his argument that the evidence found and seized from his building should have been suppressed. Defendant claimed that the trial court erred in determining that the search of defendant's business was justified by the exigent circumstances exception to the warrant requirement and that the items on which probable cause for the search warrant was based were not in plain view. The trial court again denied the motion, concluding that there were exigent circumstances permitting the search of defendant's business and offices and that there was no new evidence to justify the suppression of that evidence.

II. Question Presented and Standard of Review

On appeal, defendant argues that the trial court erred in denying both his pretrial and posttrial motions to suppress evidence. Defendant claims that the evidentiary hearing testimony established that the search of the desk and file cabinet went beyond the exigent circumstances justifying police presence at defendant's business and failed to establish that the items seized were in plain view. Further, defendant claims that the trial testimony clearly established that the items that served as probable cause for the search warrant were not in plain view.

"We review for clear error a trial court's findings of fact regarding a motion to suppress evidence." *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). "A ruling is clearly erroneous when it leaves this Court with a definite and firm conviction that the trial court made a mistake." *People v Hampton*, 237 Mich App 143, 148; 603 NW2d 270 (1999). "However, we review de novo the trial court's ultimate decision regarding a motion to suppress." *Echavarria, supra*; see also *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998).

III. Search and Seizure

Both the United States and Michigan Constitutions protect citizens against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11; *In re Forfeiture of $176,598*, 443 Mich 261, 264-265; 505 NW2d 201 (1993). Generally, a search conducted without a warrant is unreasonable; however, this rule is subject to specifically established exceptions. *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999). Evidence obtained as a result of an unreasonable search is generally inadmissible in a criminal proceeding. *Mapp v Ohio*, 367 US 643, 655; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *People v Cartwright*, 454 Mich 550, 558; 563 NW2d 208 (1997).

A. Exigent Circumstances Exception to the Warrant Requirement

The prosecutor argued and the trial court found that the search of the desk drawer and file-cabinet drawer was justified by the exigent circumstances exception to the warrant requirement. The exigent circumstances exception allows the police to enter and search the premises, without a warrant, where probable cause exists to believe that a crime was recently committed on the premises and that evidence or perpetrators of the crime are contained on the premises. *In re Forfeiture, supra* at 271; *People v Davis*, 442 Mich 1, 24; 497 NW2d 910 (1993). However, "[t]he police must further establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action is necessary to (1) prevent the imminent destruction of evidence, (2) protect the police officers or others, or (3) prevent the escape of a suspect." *In re Forfeiture, supra*. The police must show more than a mere possibility that the evidence will be destroyed. *People v Blasius*, 435 Mich 573, 595; 459 NW2d 906 (1990).

Here, the trial court held that the police were justified in searching the drawers in order to prevent the destruction or loss of evidence related to the shooting. Certainly, the police had probable cause to believe that a crime had occurred in the building and that the building contained evidence of that crime. The police had received a report of a shooting at the building and defendant met them at the door, bleeding from three gunshot wounds. Additionally, defendant told police officers that a gunman had entered the building, demanded money, and shot him before fleeing. However, the police must also demonstrate an actual emergency in order to

justify an entry and search under the exigent circumstances exception. *In re Forfeiture*, *supra*. The officers testified that they were looking for evidence of the crime and for valuables that needed to be secured. Thus, they were not seeking to protect anyone or prevent the escape of a suspect.

The trial court concluded that the officers' search was justified to prevent the destruction of evidence. However, the police must demonstrate specific facts supporting a reasonable and objective belief that there is a risk of imminent destruction of evidence. *Blasius*, *supra* at 594-595. In this case, the police knew that the shooter had fled and that the victim had been transported to the hospital. The police had secured the crime scene, and there was no imminent danger of anyone destroying evidence of the shooting. Although the prosecutor argues on appeal that the perpetrator could have re-entered to destroy evidence, or that defendant's employees could have arrived and tampered with evidence, a mere possibility of destruction of evidence is not enough. *Id*. at 595. "To validate searches of a [building] on the basis of hypothetical possibilities of destruction or removal [of evidence] would essentially nullify Fourth Amendment protections." *Id*. at 594. Here, the police were not faced with any facts that would lead to an objective belief that evidence of the shooting was in danger of imminent destruction. Therefore, the search of the desk drawer and file-cabinet drawer was not justified under the exigent circumstances exception.

B. Emergency Aid Exception to the Warrant Requirement

On appeal and in the trial court, the prosecution argued that even if the exigent circumstances exception is inapplicable, the search could still be sustained under the emergency-aid exception. The emergency-aid exception to the warrant requirement allows police to enter a building to assist someone in need of immediate aid. *Davis*, *supra* at 25; *City of Troy v Ohlinger*, 438 Mich 477, 483-484; 475 NW2d 54 (1991). However, the scope of the entry must be limited to the emergency that justified it. *Davis*, *supra* at 26, relying on *Ohlinger*, *supra* at 484. The police "'may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance.'" *Davis*, *supra*, quoting *Ohlinger*, *supra*.

In the instant case, the police were justified in entering the building in order to assist defendant, but were not authorized to conduct a general search for evidence of a crime. Indeed, while the police may enter a crime scene to assist the victim or to search for other victims or suspects, they may not conduct a general exploratory search for evidence of the crime without a warrant. In *Mincey v Arizona*, 437 US 385, 395; 98 S Ct 2408; 57 L Ed 2d 290 (1978), the Supreme Court described the emergency aid exception and held that there is no "murder-scene" exception to the warrant requirement. The Court held that police officers, when coming upon the scene of a homicide, may search the area to look for suspects or other victims and may seize any evidence that is in plain view during that search. *Id*. at 392-393. However, the scope of the search must be strictly limited to the exigencies that justified it. *Id*. at 393. This holding was reiterated in *Thompson v Louisiana*, 469 US 17, 18-21; 105 S Ct 409; 83 L Ed 2d 246 (1984), wherein the Supreme Court held that a search was illegal where police officers entered a homicide scene and initiated a two-hour general exploratory search for evidence of the crime.

Likewise, in the instant case, the police officers were justified in entering the insurance agency to assist defendant, who had been shot. The officers were also arguably justified in

conducting a limited search of the premises to determine whether any suspects or other victims were present. However, the officers were not justified in conducting a general exploratory search for evidence of the crime.

C. Plain View

Finally, the prosecution argued the plain view exception as a basis to support the conduct of the officers. "The plain view doctrine allows police officers to seize, without a warrant, items in plain view if the officers are lawfully in a position from which they view the item, and if the item's incriminating character is immediately apparent." *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). This doctrine does not authorize any searching or manipulation of items, no matter how slight. *Id*.; see also *Arizona v Hicks*, 480 US 321, 324-326; 107 S Ct 1149; 94 L Ed 2d 347 (1987) (Scalia, J.).

Here, the trial court concluded that narcotics evidence was found in plain view during the initial search of the building. Even if we were to assume that the officers had the right to go into defendant's rear office area, the evidence discovered was not in plain view. From the testimony at the evidentiary hearing, whether the evidence was in plain view may be debatable. However, it became abundantly clear at trial that the officers did not encounter the evidence of defendant's involvement with illegal drugs through plain view observations. Rather, the officers opened drawers, looked into a bag, and moved items in order to reveal the evidence. Because the evidence from the desk drawer and file-cabinet drawer was encountered by conducting a search, the plain view exception is not applicable.[1]

D. Suppression of the Evidence

In a criminal proceeding, evidence obtained as a result of an unreasonable search is generally inadmissible. *Mapp, supra*; *Cartwright, supra*. Further, it is axiomatic that if evidence is seized pursuant to a search warrant issued on the basis of evidence illegally obtained, that evidence is also inadmissible under the "fruit of the poisonous tree" doctrine. *Wong Sun v United States*, 371 US 471, 485-486; 83 S Ct 407; 9 L Ed 2d 441 (1963); *People v Stevens (After Remand)*, 460 Mich 626, 634; 597 NW2d 53 (1999). Here, the warrant obtained was based on the evidence that we have found to be the result of an unreasonable search. Consequently, the

[1] The prosecutor raises two alternative bases for affirming the trial court's refusal to suppress the evidence, neither of which were argued in the trial court and both of which lack merit. First, the prosecutor argues that defendant consented to the search by requesting or allowing police intervention. However, defendant's request for assistance must be reasonably understood as consenting to an entry limited to providing medical assistance. Defendant did not consent to a general exploratory search for evidence. Consent must be specific and may be limited. *Florida v Jimeno*, 500 US 248, 252; 111 S Ct 1801; 114 L Ed 2d 297 (1991); *People v Marsack*, 231 Mich App 364, 378; 586 NW2d 234 (1998). The prosecutor also argues that the police officers were pursuing community-caretaking functions. However, "according to the United States Supreme Court, the defining characteristic of community care-taking functions is that they are totally unrelated to the criminal investigation duties of the police." *Davis, supra* at 22, 24-25. Here, the officers' actions were related to their criminal investigation duties, and therefore the community-caretaking exception to the warrant requirement is inapplicable to the present case.

evidence found during the initial search as well as the evidence obtained pursuant to the warrant must be suppressed. Thus, the trial court erred in failing to suppress the items connected with narcotics trafficking seized from the insurance agency.

IV. Harmless Error

Constitutional error requires reversal only where the error is not harmless beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999); *People v Anderson (After Remand)*, 446 Mich 392, 405-406; 521 NW2d 538 (1994). Because the seized items connected with narcotics trafficking, including the cocaine, must be suppressed and because this evidence was crucial to the prosecutor's case, the error was not harmless beyond a reasonable doubt. Defendant's convictions must be reversed.

V. Conclusion

Given the testimony at the evidentiary hearing and during trial, none of the argued exceptions to the warrant requirement form a basis for a legal search of defendant's business. Although arguably the ruling denying defendant's pretrial motion to suppress was not clearly erroneous, at trial it became abundantly clear that the officers violated the Fourth Amendment by conducting a search of the building without first obtaining a search warrant. Further, the additional narcotics evidence found during the execution of the search warrant issued on the basis of the evidence found during the initial unlawful search should have been suppressed as the fruit of the poisonous tree. We hold that the trial court clearly erred in denying defendant's renewed motion to suppress on the basis of defendant's claim of an unreasonable search of his business because the evidence obtained was the product of an illegal search.

Because of our resolution of this issue, we need not address defendant's remaining arguments.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck